

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 2636

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Dean

SUBJECT: State Conservation Lands

DATE: April 13, 2009 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Fav/CS
2.	McKay	Wilson	GO	Pre-Meeting
3.			GA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The CS provides for the following:

Legislative findings detailing the success of land acquisition programs and the financial challenges of managing and sustaining these lands.

That the Office of Program Policy Analysis and Government Accountability (OPPAGA) conduct a study of the divisions of the Department of Agriculture and Consumer Services (DACS) the Department of Environmental Protection (DEP), the Fish and Wildlife Conservation Commission (FWC), and any related state law enforcement officer positions to determine the most efficient means of centralizing the land management activities of the state. The report is due to the Legislature by December 1, 2009.

DEP in consultation with FWC must issue a request for proposal (RFP) for a 5-year, public-private conservation land management demonstration pilot project.

The CS provides for an effective date of July 1, 2009.

The CS creates an unnumbered section of Florida Statutes.

## II. Present Situation:

### **OPPAGA Report No. 07-S21**

The state currently manages over 3.7 million acres of conservation land at a management cost of approximately \$220 million annually. Three state agencies primarily have management responsibilities: the Department of Agriculture and Consumer Services; the Department of Environmental Protection; and the Fish and Wildlife Conservation Commission. Each of these agencies manages conservation lands differently based on its legislatively mandated responsibilities. Therefore, available recreational activities on land managed by the three agencies vary.

As part of the agency sunset review process, the Legislature directed OPPAGA to assess land management activities conducted by the Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the Fish and Wildlife Conservation Commission. In its resulting report, *Conservation Land Management Options for Legislative Consideration*, OPPAGA noted that the Legislature could consider four options to modify management of state-owned conservation lands:

- maintaining the current system of conservation land management by three separate state agencies;
- creating a council to coordinate and oversee land management activities;
- centralizing land management activities under one state agency ; and
- centralizing all land management activities under a new entity.

### **Land Management Pilot Projects**

The Legislature provided \$4,500,000 in the 2008 Appropriations Act HB 5001,<sup>1</sup> to fund a public-private land management demonstration pilot project. The pilot project sought to have a private contractor conduct all land management activities, except for law enforcement, on approximately 200,000 acres of state conservation lands for a period of 5 years. The purpose of the pilot project was to determine the cost effectiveness of land management activities conducted by a private entity compared to those conducted by the state.

Pursuant to the 2008 appropriation, the DEP, in consultation with the FWC and DACS issued a RFP on October 1, 2008. One proposal was received and was deemed inadequate and rejected, and the RFP was withdrawn.

Aside from the pilot project, the FWC has conducted a similar project on a smaller scale, known as Snipe Island. Outcomes from this project demonstrated that both the state land managers and private land managers were able to be cost effective on different activities. In response, the FWC renewed the Snipe Island contract and bundled services in a manner that allows the state to maximize the benefit of contracting and still outsource certain land management activities.

---

<sup>1</sup>Ch. 2008-152; section 1824

**The Acquisition and Restoration Council**

The Acquisition and Restoration Council (ARC), administratively housed in Department of Environmental Protection, is responsible for recommending which state agency should become the primary manager of newly acquired state lands. The ARC is responsible for evaluating, selecting, and ranking state land acquisition projects for the Florida Forever program, subject to approval or modification by the Board of Trustees. The council annually reviews Florida Forever acquisition proposals, decides which proposals should receive further evaluation, and determines the final project boundaries.<sup>2</sup>

**III. Effect of Proposed Changes:**

**Section 1:** Provides legislative findings that declare:

- Land acquisition programs have been successful in protecting the states valuable resources.
- The state has invested significant sums to protect its valuable resources.
- That management of such lands is intended to enhance and protect the resources.
- That a long-term financial commitment will be required.
- Land management expenditures have been increasing.
- That given limited resources the state needs to seek alternative methods for meeting management needs.

**Section 2:** Directs OPPAGA to conduct a study of the DACS, DEP, FWC, and any related state law enforcement officer positions to determine the most efficient means of centralizing the land management activities of the state. The study shall be submitted to the Legislature by December 1, 2009.

**Section 3:** Requires DEP, FWC, and DACS, to issue a RFP for a 5-year, public-private conservation land management demonstration pilot project. The proposal must include the following parameters:

The project must account for cost and how achievements would be met and implemented within the budget.

The project area must be no more than 200,000 acres of existing nonsubmerged conservation lands that is proportionally distributed and nearby lands managed by DEP, FWC, and DACS.

The contractor is responsible for all land management activities but is exempt from regulatory activities generally covered by law enforcement or specified services such as manatee surveys and water sampling.

That the contractor post a performance bond of no more than \$ 1 million.

DEP, FWC, or DACS may not cancel the contract unless the contractor defaults.

The proposal may not exceed \$4.5 million annually.

---

<sup>2</sup> OPPAGA Report No. 07-S21, *Conservation Land Management Options for Legislative Consideration*.

Any funds appropriated for the land management pilot project shall be held in reserve until DEP submits, and the Legislative Budget Commission (LBC) approves the plan and expenditure of funds. Once awarded the contractor must prepare a land management plan consistent with the duties of the DEP, FWC, and DACS with the certification standard of the Forest Stewardship Council (FSC). The contractor must submit the plan to the Acquisition and Restoration Council (ARC) for approval and provide a copy of the plan to the LBC. DEP must hire an auditor certified by the FSC to review and accurately compare the pilot project to other state land management results and provide recommendations to fully certify the project for all state lands. The ARC must review and evaluate the auditor's report and provide comments. The auditor must submit a report to the Governor, the Legislature, the ARC, and the LBC.

**Section 4:** Provides that the act shall take effect July 1, 2009.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

Private Sector Impact

The private sector may benefit from the increased business activities and stimulation that would result from assuming the operation and maintenance of state-owned lands.

B. Government Sector Impact:

According to DEP, the total revenue impact of the pilot projects is difficult to determine, because final size and scope of the projects is unknown. At a maximum, the pilot program would require \$22.5 million over the five-year life of the contract. Presently, DEP does not have this project funded in their budget.

**VI. Technical Deficiencies:**

“Conversation” on line 79 of the CS should be “conservation.”

## VII Related Issues:

Section 1 of the bill contains information that is not necessary for the implementation of the substantive provisions of the bill. Some of the information is data that could become inaccurate over time.

The bill does not exempt the competitive solicitation from the requirements of the Florida Efficient Government Act, ss.287.0571-287.0574, F.S., which requires a business case process before any outsourcing. Though DEP went through the process for the previously-released RFP, it would need to do so again. The bill would appear to require DEP to proceed with a competitive process even if the business case process did not justify the proposal to outsource.

The bill requires that OPPAGA conduct a study and submit its report by December 1, 2009. Though OPPAGA is prepared to meet that deadline should the bill become law, a little more time might permit OPPAGA to do a more thorough study. The study required of OPPAGA is similar to work OPPAGA has already done on this issue. Report No. 07-S21, "Conservation Land Management Options for Legislative Consideration," submitted as part of the Sunset Review process in 2007, specifically addressed options for consolidation of land management.

The bill provides that the state may not cancel the contract unless the contractor is in default of the contract. This provision conflicts with existing state law relating to appropriations, s. 287.0582, F.S., and provisions in legislation currently under consideration by the Senate, CS/CS/SB 2694.

The bill provides that the contract "must" be awarded by December 31, 2009. Events beyond the control of the state, such as bid protests, could cause the state to miss that deadline.

The bill requires that an awarded contractor must prepare a land management plan consistent with the certification standard of the Forest Stewardship Council (FSC). Though the FSC certification standards appear widely used, it appears as though other certification standards are also in use.<sup>3</sup> The bill also requires that DEP must hire an auditor certified by the FSC to review the pilot project. It is unknown whether the FSC charges for certification of auditors. Presumably, there would be costs associated with hiring the auditor.

The bill requires the auditor to submit a report to the Governor, Legislature, and Acquisition and Restoration Council. The duty to submit the report might be more appropriately placed with a state agency. Also, the bill does not specify when the report is due.

OPPAGA or the Auditor General may be able to perform the audit required by the bill.

The bill does not provide for either agency or Board of Trustees approval of the contractor's land management plan. The bill provides that the Acquisition and Restoration Council will approve the management plan, but such approval may not be consistent with the powers of the council under s. 259.035, F.S.

---

<sup>3</sup> Other standards include the Sustainable Forestry Initiative and the American Tree Farm System.

**VIII. Additional Information:**

- C. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Environmental Preservation and Conservation Committee on March 31, 2009:**

The CS removes the transfer of the Office of Coastal and Aquatic Managed Areas and the proposal for a public-private land management demonstration project for a state park. Further, the CS only requires the issuance of one RFP not two as originally proposed. Finally the demonstration project will be limited to eligible nonsubmerged conservation lands.

- D. **Amendments:**

None.